



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

999 18TH STREET- SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

September 28, 2006

Ref: 8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mike Daigle, Airport Director
Glacier Park International Airport
4170 Highway 2 East
Kalispell, MT 59901

Re: UNDERGROUND INJECTION CONTROL
PROGRAM (UIC)
Proposed Order and Penalty Complaint with
Notice of Opportunity for Hearing

Dear Mr. Daigle:

The enclosed document is a Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing (complaint) for a violation of the Safe Drinking Water Act (SDWA). Please carefully read the complaint soon, since it describes Glacier Park International Airport s (Airport) rights and responsibilities in this matter as well as EPA s authority, the factual basis of the violation, and the background for the proposed penalty. Also enclosed is a copy of the Rules of Practice that govern these proceedings, the required Public Notice associated with this complaint and, in case the Airport meets the criteria, an information sheet about the Small Business Regulatory Enforcement Fairness Act.

The Airport is required to take action within 30 calendar days of your receipt of this complaint to avoid the possibility of having a default judgment entered against it that could impose the penalty amount proposed in the complaint.

Whether or not the Airport requests a hearing, we encourage an informal conference with EPA concerning the alleged violations in an effort to negotiate a settlement. The Airport may wish to appear at an informal conference and/or be represented by legal counsel. To arrange for such a conference, the Airport should contact Amy Swanson, Enforcement Attorney, Legal Enforcement Program, at the number provided below. Request for such a conference does not extend the 30 calendar day period during which a request for hearing must be submitted.

Public Notice of EPA's complaint and the opportunity to provide written comments on the complaint is being provided pursuant to section 1423 (c)(3)(B) of the SDWA, 42 U.S.C. 300h-2(c)(3)(B). Should a hearing be held, any person who comments on the complaint has a right to participate in the hearing.

If the Airport has technical questions relating to this matter, the person most knowledgeable on my staff is Britta Campbell Copt, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 6229 or (303) 312-6229. For all legal questions, the person most knowledgeable on my staff is Amy Swanson at 1-800-227-8917 ext. 6906 or (303) 312-6906. Ms. Copt and Ms. Swanson can also be reached at the following addresses:

Britta Campbell Copt (Mail Code 8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466, or

Amy Swanson (Mail Code 8ENF-L)
Enforcement Attorney
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466.

We urge the Airport's prompt attention to this matter.

Sincerely,

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Proposed Order and Penalty Complaint
with Notice of Opportunity for Hearing
40 C.F.R. Part 22
Public Notice
U.S. EPA Small Business Resources Fact Sheet

cc: Robert Ratkowski, Glacier Park International Airport Manager of Operations and Maintenance

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. **SDWA-08-2006-00068**

In the Matter of:)	
)	PROPOSED ORDER AND PENALTY
Glacier Park International Airport)	COMPLAINT WITH NOTICE OF
)	OPPORTUNITY FOR HEARING
Proceedings under Section 1423(c))	
of the Safe Drinking Water Act)	
42 U.S.C. 300h-2(c))	

INTRODUCTION

I.This civil administrative enforcement action is authorized by Congress in section 1423(c) of the Public Health Service Act, also known as the Safe Drinking Water Act (SDWA or the Act). 42 § U.S.C. 300h-2(c). The Environmental Protection Agency (EPA) regulations authorized by the Act are set out in part 144 of title 40 of the Code of Federal Regulations (40 C.F.R.), and violations of permits or EPA regulations constitute violations of the Act. The rules for this proceeding are the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (“Rules of Practice”),” 40 C.F.R. part 22, a copy of which is enclosed.

II.The undersigned EPA official has been properly delegated the authority to issue this Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing (complaint).

III.EPA alleges that Glacier Park International Airport (Respondent) has violated the Act and proposes the assessment of a civil penalty and compliance measures, as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

IV.Respondent has the right to a public hearing before an administrative law judge to disagree with any factual allegation made by EPA in the complaint or the appropriateness of the proposed penalty, or to present the grounds for any legal defense it may have.

5. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Region 8 Hearing Clerk at the following address:

Region 8 Hearing Clerk
999 18th Street; Suite 300 (8RC)
Denver, Colorado 80202

within 30 calendar days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in the answer.

FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 CALENDAR DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM AUTHORIZED BY THE ACT.

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by performing the compliance measures set forth in the Proposed Compliance Order section of the complaint, paragraphs 37-38, and paying the proposed penalty amount. Such action to make payment need not contain any response to, or admission of, the allegations in the complaint. Such action to make payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Amy Swanson, Enforcement Attorney, at [1-800-227-8917; extension 6906 or 303-312-6906] or at the address identified in paragraph 36 herein. **Please note that calling Ms. Swanson or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action, and to each count of this complaint:

8. Section 1421 of the Act, 42 U.S.C. § 300h, authorizes EPA to promulgate regulations for underground injection control (UIC) programs setting forth minimum requirements to prevent underground injection which endangers regulated drinking water sources. EPA has promulgated such regulations at 40 C.F.R. parts 124, 144, 146, 147, and 148.
9. Pursuant to section 1422 of the Act, 42 U.S.C. § 300h-1, and 40 C.F.R. part 147 subpart BB, section 147.1351, EPA administers the UIC program for Class I, III, IV and V wells in the State of Montana. The effective date of the program is June 25, 1984. The program requirements are located at 40 C.F.R. parts 124, 144, 146, 147, and 148.
10. Pursuant to 40 C.F.R. § 144.3, the term "Director", as used in 40 C.F.R. parts 124, 144, and 146, means the EPA Regional Administrator where there is no approved State or Tribal UIC program.
11. Class V wells, defined at 40 C.F.R. §§ 144.3 and 144.80 and classified at 40 C.F.R. § 144.6(e), are shallow wells used to place a variety of non-Resource Conservation and Recovery Act hazardous fluids directly below the land surface. Class V wells, examples of which are listed in 40 C.F.R. § 144.81, release waste fluids into or above shallow groundwater and include commercial or industrial septic systems, sumps, drain fields, french drains, cesspools, abandoned drinking water wells, dry wells and infiltration galleries.
12. Class V injection wells (also known as shallow waste disposal systems) under the jurisdiction of the EPA generally are authorized to operate under a rule. The applicable regulations for Class V wells are set forth at 40 C.F.R. part 144.
13. Pursuant to 40 C.F.R. § 144.84(b)(1), circumstances in which a Class V well owner or operator are required to obtain a permit include failure to comply with the prohibition of fluid movement standards in 144.12(a) and described in 144.82(a).
14. 40 C.F.R. § 144.12(a) states that no owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water (USDWs), if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 C.F.R. part 142 or may otherwise adversely affect the health of persons.

15. 40 C.F.R. § 144.82(a), *Prohibition of fluid movement*, states: “As described in 144.12(a), your injection activity cannot allow the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of the primary drinking water standards under 40 C.F.R. part 141, other health based standards, or may otherwise adversely affect the health of persons.”

16. According to 40 C.F.R. § 144.12(c), If at any time the Director learns that a Class V well may cause a violation of primary drinking water regulations under 40 C.F.R. part 142, he or she shall (1) require the injector to obtain an individual permit, (2) order the injector to take such action as may be necessary to prevent the violation, or (3) take an enforcement action.

17. Pursuant to section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), the Administrator may issue to any person subject to and in violation of any requirement of any applicable UIC program a civil penalty of not more than \$11,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of \$137,500, or requiring compliance with such regulation, or both.

COUNT 1

18. Respondent is a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f (12).

19. Respondent owns or operates two Class V wells located at the Glacier Park International Airport facility (facility), 4170 Highway 2 East, Kalispell, Montana.

20. One Class V well, constructed in 1997, is located south of the airport terminal, north of gate 14, and serves a two-bay car wash known as the “South Car Wash.” Two floor drains in the South Car Wash are connected to a septic system.

21. The second Class V well, constructed in 1991, is located east of the car wash facility, south of the main drive, and serves a two-bay car wash known as the “North Car Wash.” Two floor drains in the North Car Wash are connected to a septic system.

22. Each Class V well is equipped with an individual water/oil separator leading to a 1500 gallon septic tank. The drainfield is 32” below the surface.

23. EPA conducted an inspection of the facility on April 1, 2005, to determine compliance with applicable UIC regulations.

24. Following the April 1, 2005 inspection, EPA notified the Respondent by letter dated May 19, 2005, that Respondent was required to either discontinue the use of the

present disposal system or apply for a UIC permit based on the potential harm to USDWs posed by the waste discharged through industrial disposal wells such as Respondent's.

25. On June 22, 2005, Respondent submitted two permit applications for the facility's Class V wells.

26. As part of the permit application, Respondent sampled the wash fluids discharged into the Class V wells. The analytical results for antimony from the South Car Wash water and North Car Wash water were 0.013 and 0.012 mg/L, respectively.

27. Antimony is a "contaminant" within the meaning of 40 C.F.R. §§ 144.3.

28. The maximum contaminant level (MCL) for antimony is 0.006 mg/L. 40 C.F.R. Part 141, subpart OO, Appendix A.

29. The MCL for antimony set forth at 40 C.F.R. Part 141, subpart OO, Appendix A, is a primary drinking water standard or regulation within the meaning of 40 C.F.R. §§ 144.12(a) and 144.82(a).

30. On January 31, 2006, EPA issued Respondent a Notice of Noncompliance notifying Respondent that the discharge into Respondent's Class V wells from the North Car Wash and the South Car Wash contained levels of antimony in excess of the MCL in violation of 40 C.F.R. §§ 144.12(a) and 144.82(a), and 42 U.S.C. § 1423.

31. In the Notice of Noncompliance, EPA denied Respondent's permit application until such time as Respondent can demonstrate that the North and South Wash fluids meet the drinking water standards. EPA directed the Respondent to immediately cease injection into the Class V wells.

32. Respondent ceased injection into the Class V wells on February 3, 2006.

33. Respondent's discharge of the contaminant antimony in excess of the MCL into its Class V wells constitutes a violation of section 1421 of the Act, 42 U.S.C. § 300h, and 40 C.F.R. §§ 144.12 and 144.82(a), for the period June 20, 2005, through February 2, 2006.

PROPOSED ORDER WITH ADMINISTRATIVE CIVIL PENALTY

34. For violations of the Act that occurred on or after March 16, 2004, the Act, as amended, authorizes the assessment of a civil penalty of up to \$32,500.00 per day, 42 U.S.C. § 300h-2(b). The Act requires EPA to take into account the following factors in assessing a civil penalty: the nature, circumstances, extent and gravity of the violations; any economic benefit or savings gained resulting from the violations; Respondent's

history of such violations; Respondent's culpability for the violations; Respondent's good-faith efforts to comply with applicable requirements; the economic impact of the penalty on the Respondent; and other factors that justice may require.
42 U.S.C. § 300h-2(c)(4)(B).

35. In light of the statutory factors and the specific facts of this case, **EPA proposes that the Respondent be ordered to pay a penalty of \$15,700 for the violation alleged above, as explained below:**

Nature, Circumstances, Extent, and Gravity of Violations

Failing to prevent the movement of fluids containing any contaminant in exceedance of the primary drinking water standards or other health based standards into a USDW is serious because of the threats to the quality of the USDWs and health of persons served by it.

Prior Compliance History

No adjustment made regarding this factor at this time.

Good-Faith Efforts to Comply

On January 31, 2006, EPA sent Respondent a Notice of Noncompliance. This letter informed Respondent that it had failed to prevent movement of fluid containing contaminants exceeding drinking water standards into USDWs. This letter ordered Respondent to immediately cease injection into its Class V wells. On February 3, 2006, Respondent notified EPA that it had ceased injecting fluids into its Class V wells. Respondent has been diligent in providing EPA with updates on its efforts to return to compliance.

Degree of Culpability

No adjustment made regarding this factor at this time.

Economic Benefit

An economic benefit was experienced by Respondent from its delayed alternative disposal of wastewater. The total delayed cost of compliance is estimated to be \$1,377.00.

Ability to Pay

EPA did not reduce the proposed penalty due to this factor, but will consider any new information Respondent may present regarding Respondent's ability to pay the penalty proposed in this complaint.

Other Matters that Justice may Require

A downward adjustment was made to the proposed penalty due to Respondent's efforts in correcting its MCL exceedance.

36. Respondent's payment of the penalty shall be made by money order or certified check made payable to "Treasurer, United States of America" and mailed to the following address:

EPA - Region 8
Regional Hearing Clerk
P.O. Box 360859
Pittsburgh, Pennsylvania 15251

A copy of said check shall be mailed to the following address:

Amy Swanson (8ENF-L)
Enforcement Attorney

U.S. EPA - Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

PROPOSED COMPLIANCE ORDER

37. Respondent shall comply with the following:
- a. Install and implement a method for permanently reducing the levels of antimony below the MCL of 0.006 mg/L. from both the North Car Wash and South Car Wash, respectively, in accordance with the options and timeframes discussed below. The treatment method selected by Respondent shall be incorporated into and made a condition of the permit. Regardless of the treatment option selected, Respondent shall take representative samples of the water from the North Car Wash and South Car Wash on a quarterly basis and submit them to the EPA representative designated in paragraph 35 until such time as the final permit is issued. Following issuance of the final permit, all sampling and monitoring shall be conducted in accordance with the terms of the permit.
 - i. On or before October 16, 2006, Respondent may install and implement the treatment method involving a chemical addition system using X-MET 1150 and a coagulant that it submitted to EPA on August 24, 2006, based on a recommendation from its consultant, Apex Engineering, PLLC; or
 - ii. Respondent shall notify EPA of an alternative treatment method for reducing the levels of antimony in the water from the North Car Wash and South Car Wash below the MCL on or before October 16, 2006. Respondent shall submit a plan and a schedule for installing and implementing the treatment method selected to EPA for review and approval within sixty (60) days of the effective date of the complaint; or
 - b. Submit plans in writing for closure of the Class V wells, including a schedule for plugging the drains or retrofitting the disposal systems, and a plan for alternative disposal for the waste in accordance with the requirements of 40 C.F.R. § 144.12 (a), (c), and (d). The plan must address the specific type, specifications and size of tanks to be installed, installation requirements, and provide a schedule for integrity testing and regular maintenance, inspections and monitoring requirements. EPA will review the proposed plan and schedule and either approve them or provide Respondent with written comments within fifteen (15) days of receipt. Once the closure or retrofitting has been accomplished, documentation must be provided including an as-built sketch of the drain system(s) showing where changes have been made. The drain system(s) must be closed or retrofitted in a manner that will prevent future use.
38. Please submit all requested documentation to:

Britta Campbell Copt (MC 8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

GENERAL PROVISIONS

39. The provisions of this complaint shall apply to and be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns.

40. As required by the Act, prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for people to comment on the matter, and present evidence in the event a hearing is held. 42 U.S.C. § 300h-2(c)(3)(B).

41. The administrative law judge is not bound by EPA's penalty policy or the penalty proposed by EPA, and may assess a penalty above the proposed amount, up to \$32,500.00, per day for each violation, as authorized in the statute, as amended.

42. This complaint does not constitute a waiver, suspension, or modification of the requirements of any applicable provision of the Act or the UIC regulations implementing the Act, which remain in full force and effect. Issuance of this complaint is not an election by the EPA to forego any civil or any criminal action otherwise authorized under the Act.

Issued this 25th day of September, 2006.

COMPLAINANT,

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the attached
PROPOSED ORDER AND PENALTY COMPLAINT WITH NOTICE OF OPPORTUNITY
FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street,
Denver, Colorado, and that a true copy of same was sent via Certified Mail, Return Receipt

Requested, to:

Mike Daigle, Airport Director
Glacier Park International Airport
4170 Highway 2 East
Kalispell, MT 59901

9/28/06
Date

SIGNED
Judith McTernan

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE
REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON SEPTEMBER 28, 2006.**

